

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

SIDI MOHAMED ABDERRAHMANE	.	Civil Action No. 1:17cv1040
DAHY,	.	
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	June 8, 2018
RENTGROW, INC.,	.	10:00 a.m.
Defendant.	.	
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TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	DREW D. SARRETT, ESQ. The Sarrett Law Firm PLLC 513 Forest Avenue, Suite 205 Richmond, VA 23219
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FOR THE DEFENDANT:	KENNETH J. NICHOLS, ESQ. Nixon Peabody LLP 799 - 9th Street, N.W. Suite 500 Washington, D.C. 20001-4501
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ALSO PRESENT:	SIDI MOHAMED ABDERRAHMANE DAHY DANIELLE PARRINGTON, ESQ.
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OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 THE COURT: Civil Action 17-1040, Sidi Mohamed  
3 Abderrahmane Dahy v. Experian Information Solutions, Inc., et  
4 al. Will counsel please note their appearances for the record.

5 THE COURT: Mr. Sarrett?

6 MR. SARRETT: Good morning, Your Honor. Drew Sarrett  
7 here on behalf of Mr. Dahy, and he's present in court today as  
8 well.

9 THE COURT: Good morning.

10 MR. NICHOLS: Good morning, Your Honor. Kenneth  
11 Nichols again on behalf of RentGrow, Inc. With me today at  
12 counsel table is Danielle Parrington, an in-house lawyer with  
13 RentGrow. She is a lawyer but is not admitted to this bar  
14 but -- and does not plan to speak, but if it's all right, she'd  
15 like to sit at counsel table.

16 THE COURT: Of course. That's all right.

17 And this is before the Court on the defendant's  
18 motion for summary judgment. I assume because you are here  
19 that there was no effort made to try to resolve this case. I  
20 don't believe you contacted Judge Nachmanoff's chambers; is  
21 that correct?

22 MR. NICHOLS: We did not contact Judge Nachmanoff's  
23 chambers; that's correct, Your Honor. We did make efforts to  
24 try to resolve the case but were not successful.

25 THE COURT: All right. Well, this is a final motion

1 because the Court has looked carefully at the paperwork here.  
2 The real issue in this case is whether or not the defendant  
3 employed reasonable procedures to assure maximum possible  
4 accuracy of the credit information that was provided in this  
5 case. This is one count that's against your client under  
6 1681e(b) of the statute, and you've provided evidence  
7 explaining that your normal practice is to, among other things,  
8 go to Experian as the credit source, the source of much credit  
9 information.

10           You've put on evidence, as I understand this record,  
11 and I don't believe it's really refuted by the, by the  
12 plaintiff, that the volume of your business is quite extensive,  
13 that you issue thousands and thousands of these reports, that  
14 you've had a very low rate of complaints about inaccuracy, and  
15 that there would be no reasonable way in which you could be  
16 expected to look beyond what an agency like Experian gives you,  
17 and Experian is one of what is, everybody knows is the "big  
18 three" in terms of credit reporting agencies upon which all  
19 kinds of financial institutions base their lending and other  
20 types of consumer decisions -- commercial decisions.

21           So, Mr. Sarrett, you need to explain to the Court  
22 what evidence there is in this record that's truly in dispute  
23 as to the reasonableness of the procedures that were used by  
24 the defendant because the burden is on you to show that.

25           MR. SARRETT: Yes, Your Honor. Thank you for hearing

1 me. In the defendant's initial opening brief in support of  
2 motion for summary judgment, there was reference made to FTC  
3 guidance related to reliance on so-called reputable sources of  
4 information. Now, that guidance has been withdrawn because of  
5 Dodd-Frank and the fact that the CFPB has taken over the  
6 enforcement or regulation of the FCRA, but what that guidance  
7 actually says is you have the right to rely on a reputable  
8 source of information if there's no indication that there could  
9 be any inaccuracies in that information, if there's no  
10 indication that the information you're receiving from that  
11 source is implausible on its face.

12 In this case, the report that was prepared by the  
13 defendant regarding Mr. Dahy, I submit, has evidence of facial  
14 implausibility. For instance, it states a notice that says the  
15 Social Security number does not match to the Social Security  
16 number that was provided to Experian.

17 It also says that there's eight credit accounts that  
18 were opened before issuance of the Social Security number.  
19 There's a different name that is different from Mr. Dahy's as  
20 listed as the primary name. It lists a wrong employer for  
21 Mr. Dahy. It provides an incorrect primary address, and then  
22 there's other information that shows a correct spelling of  
23 Mr. Dahy's name, and in light of that FTC guidance, when you  
24 have information even from a reputable source that's facially  
25 implausible, that heightens the duty that the reporting

1 institution, in this case RentGrow, has to investigate whether  
2 or not that facially implausible -- or facially inconsistent  
3 information is actually accurate.

4           Additionally, there were several contracts that we  
5 attached in our opposition motion, and defendant refers to them  
6 as boilerplate language regarding the accuracy and disclaimer  
7 of a warranty of accuracy, but I submit to the Court that's an  
8 indication, the language in those contracts, in which Experian  
9 is telling the defendant we are not warranting or guaranteeing  
10 the accuracy of this information. We are not warranting that  
11 this information is fit for a particular purpose. That is  
12 indicia that it was not, in fact, reasonable for the defendant  
13 to rely on Experian's credit reporting.

14           Additionally, the defendant in its deposition  
15 acknowledged that it was aware that Experian sometimes mixed up  
16 consumer credit files with the identity -- with another  
17 consumer.

18           THE COURT: And I accept all of that. Here's the  
19 problem, though. In the -- this is a serious practical  
20 problem: My understanding is the way this works is that  
21 there's a very short turnaround time, that the rental or the  
22 apartment complex wants a response relatively quickly.

23           What you're proposing, and I don't think there's  
24 anything in your papers that suggests what a reasonable  
25 approach would be for somebody in the defendant's position, how

1 do they conduct this reinvestigation? How long would it take?  
2 What would the expense be?

3 And in the meantime, your client, who's trying to  
4 rent this apartment, isn't going to get it because the rental  
5 company doesn't have the information that it needs.

6 So the practical reality here -- and you've settled  
7 with Experian. The problem with this case and the real damage,  
8 the source of the damage is not this defendant. It's Experian.  
9 Experian messed it up. Experian should have recognized that  
10 there was a problem with what it was reporting, and you've  
11 obviously, and I don't know what it was, but you've taken care  
12 of that. You've resolved that portion of the case.

13 So this defendant, the issue here is whether given  
14 the realities of this type of business, is it reasonable,  
15 moreover, does this defendant have reasonable procedures to  
16 assure maximum possible accurate information, and the courts  
17 have held essentially that it is not unreasonable for them to  
18 rely on one of the "big three" credit reporting agencies.

19 The other problem in this case, as I understand it,  
20 because again, that same statute provides that when a consumer  
21 does perceive there to be an inaccurate report, there's a  
22 reinvestigation obligation on the part of the credit  
23 provider -- or the information provider, and your client didn't  
24 avail himself of that. But again, even if he had done that, I  
25 assume it would have taken a little bit of time, and I don't

1 know how, how long the apartment complex holds open the rental  
2 application.

3 But under the specific facts of this case, where  
4 there's no evidence as to what else this defendant could have  
5 done under the circumstances within a reasonable amount of  
6 time, I don't see any way in which this case goes forward.

7 MR. SARRETT: Your Honor, may I respond to a few of  
8 those points?

9 THE COURT: Go ahead.

10 MR. SARRETT: Number one, the contention that the  
11 defendant only has a limited amount of time to review this  
12 credit report information is belied by the fact that they have  
13 a separate, individualized review of civil court record and  
14 criminal court record information, so in this case, what  
15 happened is the credit information was provided by Experian to  
16 RentGrow. RentGrow then, in fact, did review that information  
17 because in the document RG-70 through RG-74, there are a number  
18 of scoring parameters that were applied via RentGrow's  
19 proprietary algorithm to determine what credit risk Mr. Dahy  
20 presented to the landlord.

21 And if you look at that document, RG-70, it shows  
22 that they are actually disregarding some of the information on  
23 the credit report. For instance, it says, "Problem Type,  
24 Collections, Charge-offs, Judgments, Years/Balances Scored."  
25 They only go back two years.

1           So obviously, they are able to delineate between  
2       certain pieces of information that are within the credit report  
3       and other pieces of information that are within the credit  
4       report for the purposes of scoring it for their client, but in  
5       addition to that, the specific criminal and civil record review  
6       that was at issue for Mr. Dahy which came back clean was not  
7       prepared and finalized until September 28, I think four days  
8       after he -- the application was submitted and the inquiry was  
9       made to Experian.

10           And in the deposition that was taken of  
11       Mr. Hennessey, I specifically asked, "Why is there a human  
12       review of the civil records information and the criminal  
13       records information? Is that because those sources are less  
14       reliable than Experian?"

15           And the response was, "No, not necessarily. We  
16       believe that applying varying laws, we have to review the civil  
17       records and the criminal records."

18           And so, in fact, the landlord is not saying we have  
19       to have this information immediately because by their  
20       defendant's own admission, some of the information isn't coming  
21       until three or four days after the application was submitted.

22           Additionally, in this case, Mr. Dahy did not submit a  
23       written dispute to the defendant, but in the record, there is a  
24       notion that the rental agent on behalf of Mr. Dahy before the  
25       report was finalized, because the report is not finalized, the



1 complete report, until all the civil records and criminal  
2 records are fulfilled, processed, analyzed, and that's reported  
3 to the landlord, there's evidence that this rental agent  
4 contacted the defendant and specifically said Mr. Dahy disputes  
5 that he has bad credit.

6 And so the defendant makes a contention that they  
7 have no ability whatsoever to review any of the credit  
8 information that's contained in the reporting from Experian,  
9 but the reality is that is exactly the service that they offer  
10 to their landlord tenants, and that was established in one of  
11 the documents that was attached to our opposition to the motion  
12 for summary judgment, and that was Exhibit J, and that is a  
13 promotional post that contains quotations for Mr. Hennessey,  
14 who was the deponent as the 30(b)(6) designee, and what, what  
15 he says is, "One of the things we provide is -- to our landlord  
16 clients is additionally, we limit their legal exposure by using  
17 a neutral third party for their screening process."

18 It is simply incredible for the defendant to say: We  
19 are able to review this credit reporting data in milliseconds  
20 to apply our landlord client's scoring criteria through our own  
21 proprietary algorithm, but there is no possible way that we  
22 could flag a credit report to indicate that when it says the  
23 Social Security does not match, that may be indicia of the  
24 reporting being inaccurate.

25 And I submit to the Court that under *Dalton*, which is

1 not exactly similar to this case but, I think, has certainly  
2 impact on this case, the Fourth Circuit ruled in a case in  
3 which the credit reporting agency at issue had relied on a  
4 third party, that the question of whether or not the procedures  
5 were reasonable were always -- almost always a question for the  
6 jury, and *Dalton* quoted a section -- another case in which it  
7 said to create a triable issue of fact with respect to  
8 reasonableness, a plaintiff need only minimally present some  
9 evidence of unreasonableness.

10           They signed a contract with Experian that said we do  
11 not warrant or guarantee the accuracy of our information.  
12 Their deponent testified that they knew sometimes Experian  
13 mixed up files. Their deponent testified that sometimes  
14 consumers had disputed over mixed-up files. Their deponent  
15 testified that they knew there would be some inaccuracies in  
16 the credit reporting of Experian.

17           They are reviewing the credit reporting. That's the  
18 service they provide to them.

19           The face of this credit report clearly contains  
20 indicia that there are defects in the reporting from Experian,  
21 and their defense to that is, simply put, we do not have to  
22 review that at all, and I do not believe that to be the law,  
23 even though there are certainly some cases making that point,  
24 but this case is distinguishable from those cases because  
25 before they finalized the report, they had noticed that

1 Mr. Dahy contended that his credit report was not bad, that he  
2 had good credit, and they did nothing with that information,  
3 they didn't go back to Experian, no one looked at the report,  
4 and they simply are regurgitating information that there are  
5 certain indicia of inaccuracy, and I think that's enough for  
6 the jury to consider it, whether or not the procedures are  
7 unreasonable.

8 And again, in *Dalton*, also, the Fourth Circuit didn't  
9 make clear whether if something is so facially inaccurate or  
10 implausible, whether that on its own is enough for a jury to  
11 infer that the procedures were unreasonable.

12 The volume of their credit report screening shows how  
13 well they are able to process that credit report screening  
14 through their proprietary algorithm to rate and score a given,  
15 a given prospective tenant, and so that shows and in my opinion  
16 could be inferred from that that there could also be scoring  
17 from a different basis to determine whether or not something  
18 was accurate or inaccurate.

19 And if the law is that simply by giving an opinion  
20 that the, that the source of this credit reporting information  
21 is accurate, there will be absolutely no incentive for a  
22 defendant like RentGrow to do anything to improve its reporting  
23 procedures by getting information from Experian. All they have  
24 to do is simply regurgitate it, even in this case in which  
25 before the report is finalized, someone contacts them and tells

1     them there's something wrong here.

2             THE COURT: All right. Well, let me ask Mr. Nichols,  
3     Mr. Nichols, do you agree that there was a clear communication  
4     to your client that Mr. Dahy was contesting the accuracy of the  
5     credit report?

6             MR. NICHOLS: Not a clear one, Your Honor, no.  
7     What's important to realize here, and I think this is made  
8     clear in our papers, is that when Mr. Dahy was with the JBG  
9     rental agent at that time, all the rental agent had was the  
10    very top of his consumer report. All it said was there are,  
11    you know, severe collection items and things of that nature.

12            He didn't have the underlying credit lines, right?  
13    That was suppressed, and that is something that this client,  
14    JBG/Residential, wanted. They wanted to suppress that  
15    information for the privacy of someone like Mr. Dahy, okay?

16            When he -- when the rental agent told Mr. Dahy to say  
17    that you have bad credit, that's all he was told, so Mr. Dahy  
18    at that time didn't know what the particular inaccuracies were.  
19    Nobody did --

20            THE COURT: But that's not answering my question.

21            MR. NICHOLS: Okay.

22            THE COURT: My question was did this agent -- do you  
23    agree that the agent reported back to your client that Mr. Dahy  
24    was contesting the accuracy of the report? And that's a  
25    representation that's been made by the plaintiff.

1           My understanding is that that person has not been  
2       deposed.

3           MR. NICHOLS:   Correct.

4           THE COURT:   So what evidence do we have in this  
5       record, this is now summary judgment, if the case were to go to  
6       trial, what evidence would there be that that complaint had  
7       been communicated to your client?

8           MR. NICHOLS:   There's only one document, Your Honor,  
9       and that is a notation from the consumer relations system of a  
10      phone call.

11          THE COURT:   Your client?

12          MR. NICHOLS:   Correct.   Of a phone call received from  
13      the JBG/Residential individual, the rental agent, saying that  
14      I'm here with Mr. Dahy.   His credit report came back, and he's  
15      saying that he has good credit, not bad credit.   That's all.  
16      There's no written --

17          THE COURT:   All right.   What is your -- what, if any,  
18      policy does your company have when it gets that kind of a  
19      response?   What do you do?

20          MR. NICHOLS:   What we did in this case and what we  
21      normally do is we asked the individual, the consumer, to give  
22      us some contact information, basically submit a request for  
23      your entire credit report, your entire tenant screening report.

24          THE COURT:   And how was that communicated to Mr. Dahy  
25      in this case?

1 MR. NICHOLS: It was -- in this case, it was by, by  
2 phone, I believe, and he was given that information through the  
3 JBG/Residential agent. He did then submit by facsimile his  
4 Social Security card and a form that we had given him or that  
5 form that he had downloaded with that information to ask for  
6 the entire report.

7 Then he got the entire report, and that report was  
8 attached to an e-mail that said if you see any inaccuracies in  
9 the report, please file a dispute with us. That's the  
10 procedure.

11 THE COURT: And he did not do that.

12 MR. NICHOLS: Correct.

13 THE COURT: Yeah.

14 MR. NICHOLS: Correct.

15 THE COURT: And the statute does expect the consumer  
16 to act in his own best interests as well. There's no way in  
17 which one can expect an agency like the defendant's to know  
18 what the problem is.

19 I think under the specific facts of this case, I'm  
20 going to find that summary judgment is appropriate. I don't  
21 think any reasonable juror could find that the methodology used  
22 by the defendant in this particular case was unreasonable. The  
23 plaintiff has not provided the Court with any evidence, in my  
24 view, that would show what the reasonable procedures would have  
25 been that were not followed, and in this case, where the

1 plaintiff was given the opportunity to assist in having this  
2 problem resolved by providing the information so that the  
3 reinvestigation could occur, he didn't do that, and that in and  
4 of itself, I think, makes the case one for which summary  
5 judgment is appropriate.

6           You did raise other issues in your motion for summary  
7 judgment, that is, that the plaintiff would have been required  
8 to obtain a cosigner regardless of the information. You also  
9 argued there were no actual damages as a result of the tenant  
10 screening report, and I certainly think that those two issues  
11 are meritorious, but I don't have to get into the details of  
12 them because the dispositive issue in this case is whether or  
13 not your client violated 1681e(b) in the manner in which it  
14 conducts these investigations, and I'm finding that it did not  
15 act in an unreasonable manner.

16           So I'm going to grant summary judgment. Thank you.

17           MR. NICHOLS: Thank you, Your Honor.

18           MR. SARRETT: Thank you for hearing us, Your Honor.

19           THE COURT: And that does moot the motion in limine,  
20 so that resolves all issues in this case.

21                           (Which were all the proceedings  
22                           had at this time.)  
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CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of  
the record of proceedings in the above-entitled matter.

/s/  
Anneliese J. Thomson